

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (New Administrative Regulation)

5 401 KAR 4:070. Coal combustion residuals surface impoundments.

6 RELATES TO: KRS 146.200-146.990, 151.110, 151.125, 151.250, 224.1, 224.10, 224.50,  
7 224.99, 40 C.F.R. 257.73, 257.74, 257.82, 257.83, 16 U.S.C. 661, 1273, 1531, 33 U.S.C. 1261 -  
8 1387

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the  
11 cabinet to promulgate administrative regulations not inconsistent with the provisions of law  
12 administered by the cabinet. KRS 224.10-100 and 224.70-100 authorize the cabinet to develop  
13 and conduct a comprehensive program for the management of water resources and to provide the  
14 prevention, abatement, and control of water pollution. This administrative regulation establishes  
15 the standards for coal combustion residuals (CCR) surface impoundments pertaining to the  
16 permit-by-rule established in 401 KAR Chapter 46.

17 Section 1. Definition. "Coal combustion residuals surface impoundment" or "CCR surface  
18 impoundment" means a natural topographic depression, man-made excavation, or diked area,  
19 which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or  
20 disposes of CCR.

1           Section 2. The structural integrity criteria requirements for an owner or operator of an  
2 existing CCR surface impoundment shall be as established in 40 C.F.R. 257.73.

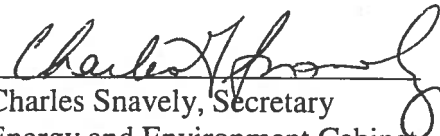
3           Section 3. The structural integrity criteria requirements for an owner or operator of a new  
4 CCR surface impoundment and any lateral expansion of a CCR surface impoundment shall be as  
5 established in 40 C.F.R. 257.74.

6           Section 4. The hydrologic and hydraulic capacity requirements for owners or operators of  
7 CCR surface impoundments shall be as established in 40 C.F.R. 257.82.

8           Section 5. The inspection requirements for owners or operators of CCR surface  
9 impoundments shall be as established in 40 C.F.R. 257.83.

10          Section 6. Except for 40 C.F.R. 257.107, including cross-references to 40 C.F.R. 257.107  
11 within 40 C.F.R. 257.73, 257.74, 257.82, and 257.83, the record keeping and notification  
12 requirements for an owner or operator of a CCR surface impoundment shall be as established in 40  
13 C.F.R. 257.105 and 257.106.

401 KAR 4:070 Coal combustion residual surface impoundments approved for filing.

  
Charles Snavely, Secretary  
Energy and Environment Cabinet

10/11/2016  
Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 22, 2016 at 6:00 p.m. Eastern Time at 300 Sower Boulevard, 1<sup>st</sup> Floor, Training Room C, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person:       Carole J. Catalfo  
                              Internal Policy Analyst, RPPS  
                              Division of Water  
                              300 Sower Boulevard, 3<sup>rd</sup> Floor  
                              Frankfort, Kentucky 40601  
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                              Email: water@ky.gov (Subject line: CCR Surface Impoundments)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 4:070

Contact Person: Carole J. Catalfo  
Phone: (502) 782-6914  
Email: water@ky.gov (Subject Line: CCR Surface Impoundments)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes design criteria and permit-by-rule requirements for new, expanded, and existing coal combustion residual surface impoundments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect public health and safety pertaining to CCR surface impoundments located near waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.70-100 require the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. This administrative regulation establishes the standards for coal combustion residual surface impoundments of the permit-by-rule established in 401 KAR Chapter 46.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by providing specific design and permit application criteria for coal combustion residual surface impoundments to protect waters of the Commonwealth as required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. This is not applicable because this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable because this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable because this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable because this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect electric generating utilities that manage coal combustion residuals by establishing the requirements for CCR surface impoundments. There are currently eight electric generating utilities that will be affected in Kentucky, with approximately 49 CCR surface impoundments. This administrative regulation will affect the Division of Waste Management and the Division of Water because it establishes requirements for entities regulated by the divisions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require no additional action on the part of regulated entities because it only incorporates federal regulation requirements that are already in effect.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will have no additional costs to entities as it only references federal regulation requirements that are already effective. The Division of Waste Management and the Division of Water will have personnel costs associated with the implementation of this administrative regulation related to investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Water does not anticipate needing additional personnel to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit the regulated entities by being consistent with the federal regulations, thereby only having one standard with which they must comply. In addition, the criteria for the disposal of coal combustion residuals established in this administrative regulation will increase the protectiveness of human health and the environment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Division of Water does not anticipate additional costs to implement this new regulation.

(b) On a continuing basis: The Division of Water does not anticipate additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Water does not anticipate any additional source of funding needed to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The

Division of Water does not anticipate additional fees to implement this new regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any fees.

(9) **TIERING:** Is tiering applied? (Explain why or why not) Tiering is applied in this regulation. Regulatory requirements depend on the hazard classification of surface impoundments.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

401 KAR 4:070

Contact Person: Carole J. Catalfo  
Phone: (502) 782-6914  
Email: water@ky.gov (Subject Line: CCR Surface Impoundments)

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Division of Waste Management and Division of Water.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, 224.70-110, 40 C.F.R. 257.73, 257.74, 257.82, and 257.83.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue because it only incorporates federal regulations that establish CCR surface impoundment standards.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue because it only incorporates federal regulations that establish CCR surface impoundment standards.

(c) How much will it cost to administer this program for the first year? The Division of Water does not anticipate additional costs to administer the regulation.

(d) How much will it cost to administer this program for subsequent years? The Division of Water does not anticipate additional costs to administer the regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Division of Water does not anticipate additional costs to administer the regulation because it only requires an evaluation of the established criteria if a regulated entity requests such an evaluation.



## FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 4:070

Contact Person:

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Phone: (502) 782-6914

Email: water@ky.gov (Subject Line: CCR Surface Impoundments)

1. Federal statute or regulation constituting the federal mandate. The federal regulations constituting the federal mandate are 40 C.F.R. 257.73, 257.74, 257.82, and 257.83.

2. State compliance standards. The state compliance standards are established in KRS 224.10-100, 224.70-100, and 224.70-110.

3. Minimum or uniform standards contained in the federal mandate. Design and siting criteria for coal combustion residual surface impoundments are established in 40 C.F.R. 257.73, 257.74, 257.82, and 257.83.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter or additional or different responsibilities or requirements because it incorporates the same requirements and standards as the federal regulation.